IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL REVISION APPLICATION NO. 189 OF 2004

M/s.Reshma Estate Pvt.Ltd. Applicants

Vs.

BJ.R.Mahadevia & ors. Respondents

Mr.D.H.Mehta i/b M/s. Thakordas and Madgavkar for applicants.

Mr.Y.S.Jahagirdar, Senior Counsel with Mr.R.D.Soni and Mr.D.F.Sharma for respondents.

CORAM: B.H.MARLAPALLE,J.
June 20, 2005.

ORAL ORDER:

1. Heard Mr.Mehta, the learned counsel for the applicants - original defendant no.1 and Mr.Jahagirdar, the learned Senior Counsel for the plaintiffs. Being aggrieved by the order dated 6/0/2004 passed by the Learned Judge of the City Civil Court at Mumbai in rejecting the preliminary issue of pecuniary jurisdiction as well as the alternative remedy being available under the Arbitration and Conciliation Act, 1996 in S.C.Suit No.3155 of 2003, this revision application has been filed.

2. Rule. Mr.Jahagirdar waives service. Rule

made returnable forthwith.

3. As is clear from the impugned order the respective parties proceeded to argue on these preliminary issues without recording evidence and, therefore, the Court proceeded to decide the said issues in favour of the plaintiffs. The defendant no.1 has, in this revision application, given up its challenge on the findings recorded on the issue of arbitral proceedings under the agreement and, therefore, the arguments have been advanced only on the issue of pecuniary jurisdiction.

4. The trial Court considered the prayers set out in the plaint, the provisions of clause 32 of the Agreement at Exhibit-H, Clause 34 of the Plaint and the provisions of the Maharashtra Ownership of Apartments Act as well as Maharashtra Ownership of Flats Act. There is no dispute that the suit flat no.18 admeasures 2723 sq.ft. located in Krishna Mahal building which is located on a total area of 7144 sq. yards. As per the plaintiffs the suit was valued for taking into consideration the rate of Rs.10 per sq.ft. for the flat and, therefore, the requirements of Section 6(xi) of the Bombay Court

Fees Act were fulfilling. The defendant no.1, the builder, did not agree to this proposition and it was submitted that there was no agreement in favour of the plaintiffs, the agreed price of Rs.10 per sq.ft. was a misnomer and the provisions of the Maharashtra Ownership of Flats Act or Maharashtra Ownership of Apartments Act were not applicable in the instant case. Mr.Mehta, the learned counsel for the Defendant no.1 has also referred to the correspondence exchanged between the defendant no.1 and the members of the Society in support of his contentions that the agreed price was never at Rs.10 per sq.ft.

5. The issue of pecuniary jurisdiction in such a case would be certainly a mixed question of fact and law and, therefore, it was necessary for the parties to lead evidence and allow the Court to decide the preliminary issues along with all other issues. If the findings of the trial Court would be against the plaintiffs on the preliminary issues, obviously he/she would be non-suited and it would not be necessary for the trial Court to proceed to record findings on other issues. The trial Court proceeded on the preliminary points as according to both the

learned counsel there was no evidence to be led by either side and it is, therefore, claimed that the trial Court was led to an erroneous approach.

6. Having heard the learned counsel for the respective parties and perused the documents on record, it would be expedient that the preliminary issue only to the extent of Section 9A is decided on the basis of the evidence that the parties may lead during the trial of the suit and the impugned order passed without leading evidence is set aside.

7. In the circumstances this application is allowed partly and the impugned order dated 6th September 2004 is hereby quashed and set aside. The trial Court is directed to frame preliminary issue along with other issues and decide the same after the parties adduce evidence and while doing so the trial Court would not be influenced by any observations made in the impugned order. The trial of the suit is hereby expedited.

8. Rule is made absolute accordingly with no order as to costs.

(B.H.MARLAPALLE,J.)